IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION (LDG) NO.1380 OF 2007

Pragi d/o. Bharat Vankiani,
a minor age 13 years, through her
father, guardian and next friend
Bharat Vankiani, residing at 14A,
First Floor, Thatta Nivas, Pestom
Sagar Road No.3, Chembur,
Mumbai-4900 089. ...Petitioner.

Vs.

1. State of Maharashtra
   (Through the Principal Secretary,
   School Education, Mantralaya,
   Mumbai-400 032.
2. Deputy Director of Education
   (Secondary), Jawahar Bal Bhavan,
   Charni Road (W), Mumbai-400 004.
3. R. A. Vidyalaya (Ramji Ashar
   Vidyalaya).
4. Smt. M.D. Bhatia English Medium
   High School.
   Nos.3 and 4 having their address
   at M.G. Road, Ghatkopar (East),
   Mumbai-400 077. ...Respondents.

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Mr.Mukesh Vashi i/b. M/s. M. P. Vashi Associates for the Petitioner.
Mrs. S.M. Dandekar, AGP for Respondent Nos.1 and 2.

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CORAM : SWATANTER KUMAR, C.J. &
DR.D.Y.CHANDRACHUD, J.

20th September, 2007.

JUDGMENT (Per Dr. D.Y. Chandrachud, J.):

The Petitioner is a student of Standard VI at the M.D. Bhatia English Medium High School at Ghatkopar (East). At the annual examination held in March 2007, the Petitioner was declared to have failed. The Petitioner's father took up the matter with the Education Department and eventually, instituted these proceedings under Article 226 of the Constitution of India. Relying on Appendix 7 of the Secondary Schools Code, the Petitioner has challenged the decision of the School and sought promotion to Standard VII.

2. Affidavits in reply have been filed in these proceedings by the Deputy Education Inspector, by the Management of the School and by the student. On behalf of the Management, a preliminary objection has been taken to the maintainability of the Petition on the ground that the management is not 'State' within the meaning of Article 12 of the Constitution. In the view which we have taken, it is not necessary for us to consider that objection since even on merits, we have arrived at the conclusion that the petition is lacking in substance.

3. Appendix 7 of the Secondary Schools Code contains Rules of Promotion. The substance of the contention of the Petitioner is found on a Government Resolution dated 19th November 1987. The Deputy Education Inspector has drawn the attention of the Court in his affidavit to the fact that the Government Resolution dated 19th November 1987 no longer holds the field since it has been replaced by a subsequent Government Resolution dated 31st August 2004 which came to be made applicable from the year 2005-06. The Petitioner obtained 14 marks out of 100 in the written examination in the subject of Mathematics in the First Semester and 30 marks out of 100 in the examination for the Second Semester. Thus, the Petitioner obtained a total of 44 marks out of 200 in both the Semesters. Under the GR dated 31st August 2004, the minimum required percentage is 25% i.e. 50 marks out of 200. The Petitioner has clearly failed to achieve the required marks for being promoted to Standard VII.

4. We, therefore, do not find any merit in the grievance of the Petitioner. The petition shall accordingly stand dismissed.

CHIEF JUSTICE

Dr.D.Y. CHANDRACHUD, J.